

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

KARL SNOWDON; SUZANNE SNOWDON; )  
MAVERICK SNOWDON; and PAIGE )  
SNOWDON, )

Case No.: 2:09-cv-01984-RLH-RJJ

## ORDER

(Motion to Dismiss–#10; Motion to Dismiss–#11)

vs.  
PREFERRED RV RESORT OWNERS )  
ASSOCIATION, a Nevada Corporation dba )  
Preferred RV Resort; JAMES S. HORTON, )  
individually and as manager of the Preferred RV )  
Resort; THOMAS KREFT, individually and as )  
an employee of Preferred RV Resort; )  
CANDICE DURBIN, individually and as )  
President of the Board of Directors of Preferred )  
RV Resort; WILLIAM T. SCHAFFER, )  
individually and as Treasurer of the Board of )  
Directors of Preferred RV Resort; RUTH )  
UNCAPHER, individually and as Secretary of )  
the Board of Directors of Preferred RV Resort; )  
KARL ARNSHEIER, individually and as )  
Director of Preferred RV Resort; DOES I-XX, )  
inclusive )

Before the Court is Defendants Preferred RV Resort Owners Association, James S. Horton, and Thomas Kreft's **Motion to Dismiss** (#10) as well as Defendants Candice Durbin, William T. Schaffer, Ruth Uncapher, and Karl Arnsheier's **Motion to Dismiss** (#11), both filed

1 March 25, 2010. Because these motions seek the same relief and have been joined by all  
 2 Defendants, the Court considers them jointly. The Court has also considered Plaintiff Karl  
 3 Snowdon, Suzanne Snowdon, Maverick Snowdon, and Paige Snowdon's (collectively "the  
 4 Snowdons") Oppositions (#15 and #16), filed April 23, 2010, and Defendants' Replies (#18 and  
 5 #19), filed May 3, 2010.

## 6 BACKGROUND

7 Defendant Preferred RV Resort Owners Association is a Nevada corporation that  
 8 owns and manages a "resort" in Pahrump, Nevada. Defendants Candice Durbin, William T.  
 9 Schaffer, Ruth Uncapher, Karl Arnsheier, James S. Horton, and Thomas Kreft are various officers,  
 10 directors, and employees of Preferred RV Resort. Defendants sell timeshare interests in the  
 11 Resort, which gives the Resort's "members" the right to park a recreational vehicle on certain  
 12 parcels within the Resort and to use the Resort's various amenities. On February 12, 2007, the  
 13 Snowdons purchased, as joint tenants, a fractional interest in a piece of property within the Resort.  
 14 The Snowdons allege that after they purchased their timeshare interest, Defendants subjected them  
 15 to a "barrage of harassment," which included "outrageous violent and discriminatory actions." (#1,  
 16 ¶ 4.) The Snowdons allege that when they complained about Defendants' actions, Defendants  
 17 unlawfully deprived them of their property interest in the Resort. On November 9, 2007,  
 18 Defendants informed the Snowdons that they had violated several of the Resort's rules and  
 19 regulations and that their membership privileges were being suspended for a six-month period.

20 On August 19, 2008, the Snowdons filed a suit in this Court against Defendants  
 21 pursuant to 42 U.S.C. § 1983 and alleged violations of the First, Fifth, and Fourteenth  
 22 Amendments. In addition, the Snowdons brought numerous state law claims arising from  
 23 Defendants' alleged mistreatment of their family members. The Court dismissed the Snowdons'  
 24 federal claims because Preferred RV Resort is not a state actor under 42 U.S.C. § 1983 and  
 25 dismissed the remaining state law claims for lack of subject matter jurisdiction. The Snowdons  
 26 /

1 subsequently appealed this decision to the Ninth Circuit, which affirmed on the alternative ground  
 2 that summary judgment on these claims was appropriate.

3 On October 13, 2009, the Snowdons filed a new suit in this Court against  
 4 Defendants. The Snowdons reallege all of their state law claims from the prior lawsuit, but do not  
 5 bring a claim under 42 U.S.C. § 1983. The Snowdons do, however, bring a federal claim under  
 6 the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961. In this  
 7 claim, the Snowdons allege Defendants executed an unlawful scheme wherein they marketed and  
 8 sold resort memberships to families with children, with the intention of later depriving those  
 9 families of their use of the membership. Defendants now move to dismiss the Snowdons’ RICO  
 10 claim. For the reasons discussed below, the Court grants Defendants’ motion to dismiss and  
 11 dismisses all remaining claims for lack of subject matter jurisdiction.

12 **DISCUSSION**

13 **I. Legal Standard**

14 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which  
 15 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short  
 16 and plain statement of the claim showing that the pleader is entitled to relief.” While a pleading  
 17 generally need not contain detailed allegations, it must allege sufficient facts “to raise a right to  
 18 relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A  
 19 complaint does not allege sufficient facts to raise a right to relief above the speculative level if it  
 20 contains nothing more than “labels and conclusions” or a “formulaic recitation of the elements of a  
 21 cause of action.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478  
 22 U.S. 265, 286 (1986)). Instead, in order to survive a motion to dismiss, a complaint must contain  
 23 sufficient factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 129 S. Ct. at  
 24 1949 (internal citation omitted).

25 In *Ashcroft v. Iqbal*, the Supreme Court provided a two-step approach for district  
 26 courts to apply when considering motions to dismiss. First, the court must accept as true all

1 factual allegations in the complaint. *Id.* at 1950. A court does not, however, assume the truth of  
 2 legal conclusions merely because the plaintiff casts them in the form of factual allegations. *Id.* at  
 3 1950; *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Mere recitals  
 4 of the elements of a cause of action, supported only by conclusory statements, also do not suffice.  
 5 *Iqbal*, 129 S. Ct. at 1949. Second, the court must consider whether the factual allegations in the  
 6 complaint allege a plausible claim for relief. *Id.* at 1950. “A claim has facial plausibility when the  
 7 plaintiff pleads factual content that allows the court to draw a reasonable inference that the  
 8 defendant is liable for the alleged misconduct.” *Id.* at 1949. Thus, where the complaint does not  
 9 permit the court to infer more than the mere possibility of misconduct, the complaint has  
 10 “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal quotation marks  
 11 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,  
 12 plaintiff’s complaint must be dismissed. *Twombly*, 550 U.S. at 570.

13 **II. Motion to Dismiss**

14 **A. RICO**

15 To state a cause of action under RICO, a plaintiff must allege that the defendants,  
 16 through the conduct of a business enterprise, engaged in racketeering activity that caused injury to  
 17 the plaintiff’s business or property. *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431  
 18 F.3d 353, 361 (9th Cir. 2005). A plaintiff alleging a RICO claim must also satisfy Rule 9’s  
 19 heightened pleading standard because Rule 9 applies to RICO claims. *Schreiber Distrib. Co. v.*  
 20 *Serv-Well Furniture Co.*, 806 F.2d 1393, 1400–01 (9th Cir. 1986). A RICO plaintiff must  
 21 therefore “state the time, place, and specific content” of the RICO activity. *Odom v. Microsoft*  
 22 *Corp.*, 486 F.3d 541, 552 (9th Cir. 2007) (internal citation omitted).

23 The Snowdons’ RICO claim fails because they have not alleged with sufficient  
 24 specificity any conduct that amounts to racketeering on the part of Defendants. The Snowdons  
 25 claim Defendants are liable under RICO because they engaged in mail and wire fraud when  
 26 processing the Snowdons’ timeshare interests, but the Snowdons do not describe the content of

1 Defendants' allegedly fraudulent misrepresentations. Put in other words, the Snowdons do not  
2 specify what was false or misleading about the documentation they signed when they obtained  
3 their timeshare interests in the Resort. Because they do not make any specific allegations, the  
4 Snowdons have alleged nothing more than a dispute regarding the interpretation and enforcement  
5 of the Resort's timeshare policies. This allegation might be sufficient to support one of the  
6 Snowdons' many state law claims, but it does not properly state a federal RICO claim.  
7 Accordingly, the Court grants Defendants' motion to dismiss.

8 **B. Remaining Claims**

9 Having dismissed Plaintiffs' RICO claim, this Court lacks subject matter  
10 jurisdiction over the Snowdons' state law claims. The Court therefore dismisses these claims and  
11 closes this case.

12 **CONCLUSION**

13 Accordingly, and for good cause appearing,

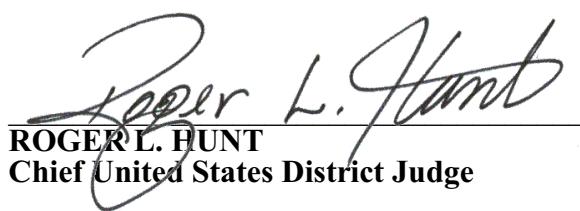
14 **IT IS HEREBY ORDERED** that Defendants Preferred RV Resort Owners  
15 Association, James S. Horton, and Thomas Kreft's Motion to Dismiss (#10) is **GRANTED**.

16 **IT IS FURTHER ORDERED** that Defendants Candice Durbin, William T.  
17 Schaffer, Ruth Uncapher, and Karl Arnsheier's Motion to Dismiss (#11) is **GRANTED**.

18 **IT IS FURTHER ORDERED** that Plaintiffs' state law claims are dismissed for lack  
19 of subject matter jurisdiction.

20 The Clerk of the Court is ordered to close this case.

21 Dated: July 1, 2010.

22   
23 **ROGER L. HUNT**  
24 **Chief United States District Judge**